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CURRENT TOPICS

The Birthday Honours

IN the Birthday Honours List announced on 10th June there is perhaps an unusually high proportion of names having legal associations, and a list of those which have come to our notice appears at p. 421, *post*. Solicitors who figure in the list include Mr. FRANCIS HARE CLAYTON, Mr. ERIC CYRIL BOYD EDWARDS and Mr. THOMAS STUART OVERY, who become knights bachelor, Mr. ROLAND PEACE CLARKE and Mr. JAMES WILLIAM FRANCIS HILL, on whom the C.B.E. is conferred, and Mr. HAROLD INGHAM BEARDER, Mr. WILLIAM KING DAVIES, Mr. PHILIP HENRY HARROLD and Mr. HAROLD POWIS, who receive the O.B.E. A former solicitor, later called to the Bar, on whom the C.V.O. is conferred is Mr. JOHN MORTON WORTHINGTON. To all these, and others whom space precludes us from mentioning here, we offer our congratulations.

The Summons for Directions: New Rules of Court

THE process of implementing the monumental report of the Evershed Committee is at best likely to be a slow one, but the beginning of the new legal year in October next will see the first tentative step taken. The R.S.C. (Summons for Directions, etc.), 1954 (S.I. 1954 No. 761 (L.5)), come into force on the first day of that month, and thereafter a new Ord. 30 will apply to proceedings whether commenced before or after that date. The Committee's recommendations on this matter were shortly discussed in an article at 97 SOL. J. 580, and may be summarised as the strengthening of the court's powers on the summons for directions with the object of limiting and defining the issues in order to expedite and facilitate the trial. Their general desire that Ord. 30, r. 2, should be expressed in mandatory, not permissive, terms has been given effect in the new rules, although the Rule Committee have not seen fit to go so far as the Evershed Committee would have them do. Nevertheless the first impression received is that the new Ord. 30 will go a long way to achieving those objects. Other major changes include new rules replacing rr. 1 and 2 of Ord. 37 with the aim of giving effect to the Evershed Committee's desire for a more liberal acceptance of documentary evidence, and the making of an entirely new Order—Ord. 49A—governing proceedings transferred from the county court. We hope to examine the rules more closely in a later issue.

Estate Agents' Commission Agreements

AN account, published in the *Journal* of the Chartered Auctioneers' and Estate Agents' Institute, of a conference recently held between the council of the institute and branch representatives shows the lively concern of members of the estate agency profession with certain matters about which solicitors, too, have strong feelings. One motion, narrowly carried, favoured the consideration of a standard form of agreement as between client and agent, "to be used by

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members at their discretion" when accepting instructions to act in private treaty sales of real property. The agreement would contain "the fair and accepted terms of this type of agency." The precise event upon which an agent earns his commission has become a vexed question since the war, and, arrogating to ourselves if we may the viewpoint of the person whose circumstances force him into the property market, with which he is probably not familiar, we would agree that standardisation would not be a bad thing if only in the interests of letting ordinary people know where they stand. The problem will be to fix the "fair and accepted terms" so as to cover every case. We take it that payment by results would be the guiding principle, the result being achieved on completion of a sale to a purchaser introduced by the agent and not before. That the conference bore in mind the interests of the client—the principal in the contract of agency—it is perhaps needless to say, but it is emphasised by the expressed intention to seek The Law Society's approval of the form of agreement.

How Soon Should a Purchaser be Bound?

OF much greater concern to solicitors is another topic discussed at the conference, that of the signature in estate agents' offices of binding contracts for sale and purchase. This time the proposal for settling a standard form of contract "to be used by estate agents" was defeated at the conference, a result at which no one will expect us to disguise our satisfaction. The sale or purchase of a house is an event of major importance in the lives of the vast majority of an agent's clients or "applicants." The conclusion of a contract imposes legal obligations on both parties and carries financial responsibilities for a purchaser which are often beyond his unaided resources. Frivolous purchasers and grasping vendors there may be, but are genuine though inexperienced buyers and sellers on this account to be caught fast in the net of a legal relationship without an opportunity of taking legal advice *related to the circumstances of the actual transaction*, of arranging suitable mortgage facilities and of having the searches and inquiries made which the accumulated experience of the legal profession has found to be essential before a purchaser binds himself? The strong view apparently held by the council of the institute against any attempt to introduce final contracts at the negotiation stage encourages us to hope that no more will be heard of this dangerous proposal.

Interest on Building Society Mortgages

IN a statement published on 11th June by the Building Societies Association, with reference to the suggestion made in some quarters that the reduction in the bank rate should enable building societies to lower the rate of interest charged to borrowers, it was said that there was no necessary or immediate connection between the bank rate and the rates paid and charged by building societies. With regard to the fact that the rate charged to borrowers was raised from 4 to 4½ per cent. shortly after the increase in the bank rate from 2½ to 4 per cent. in March, 1952, the Association argued that that rise would have taken place even if the bank rate had remained unchanged. The rise was caused by the general increase in the level of interest rates which had already taken place and which made it necessary for building societies to pay higher rates to their investors. According to the Association the rate charged to borrowers is governed by the rates which societies have to offer to their investors, and the mortgage rate cannot be lowered until a reduction in the rates paid to investors would be justified. "Building societies desire to make home ownership as cheap as possible and they may be relied on to reduce the mortgage rate if and when they can reduce the rates paid to investors without the risk of withdrawal of the funds on which the lending activities of the societies depend."

Obscene Publications

ONE of those "free for all" correspondences which are the delight of readers of *The Times* has been running for some time now under the innocuous title of "Literature and the Law." Publishers, authors, librarians and lawyers have joined in, sometimes to score debating points, but more often to make fair comment on the present state of the law with regard to literature alleged to be obscene. As against the school of thought which condemns the Obscene Publications Act, 1857, because it may result in the destruction of great literature, only one or two correspondents appeared to take a firm stand on the ground that the law is right. The Act empowers justices to act quickly by granting a warrant to a police constable to seize obscene books, papers, writings, prints, pictures, drawings or other representations kept for sale, distribution, exhibition for gain, lending on hire or otherwise published for gain, provided that they are satisfied by the complainant on oath that that is so. In order to constitute an obscene publication there must be an intention to corrupt public morals (*R.* v. *Barraclough* [1906] 1 K.B. 201). The justices then summon the occupier of the place where the goods are seized to show cause why they should not be destroyed. One wonders what the pother is about. Can it be doubted that there are books written to exploit obscenity for gain? If there are such works the traffic in them is ugly, and the law is right in providing an antidote. As a rule it is no hardship on justices to require them to read the suspected works in their entirety, as it has recently been held that they should. Where a book has merit there is often a doubt whether it has been written with the intention of corrupting public morals. In case of doubt the onus of proof is not discharged. In the rare case where a mistake is made, and a work of merit is suppressed for a time, it is only for a time, because, of course, times change, and we change with them.

"The British Journal of Administrative Law"

WE extend much more than a perfunctory welcome to a new contemporary to be published quarterly under this title. The editor is Mr. DEREK H. HENE, and the publishers Messrs. Shaw & Sons, Ltd., and Messrs. Jordan & Sons, Ltd. Administrative law—defined in the opening editorial as "the complex system of rules, regulations and case law applied by a non-coherent conglomeration of courts, tribunals and other bodies, which has developed in the British Isles in the course of the last few decades"—extends its tentacles among all classes and conditions of the community and attaches itself at many diverse points of our twentieth-century existence. The administrative law reports which are incorporated in the first number of the new journal cover in a concise form decisions of the Industrial Court and Industrial Disputes Tribunal, the Civil Service Arbitration Tribunal, Lands Tribunal, Local Valuation Courts, Rent Tribunals and the National Insurance and Health Service Tribunals, as well as cases before professional disciplinary committees at one end of the scale and the International Court of Justice at the other. Equally wide is the field intended to be covered in the pages of the journal proper, and a splendidly provocative start is made in the shape of an article by Mr. J. E. S. SIMON, Q.C., in which he lists certain minimum reforms which he considers to be required in the conduct of administrative bodies exercising judicial functions. We await future numbers with much interest.

THE LAW REFORM (LIMITATION OF ACTIONS, etc.) ACT, 1954

It is now some five years since the Committee under the chairmanship of Lord Tucker produced its Report on the Limitation of Actions (Cmd. 7440) and at last some legislative effect has been given to certain of the recommendations of that Committee by the passing of a new Act called the Law Reform (Limitation of Actions, etc.) Act, 1954, which received the Royal Assent on 4th June, 1954. The new Act does not incorporate all the recommendations of the Tucker Committee, but it does put into practice the basic idea behind those recommendations, namely, that public authorities should have no special protection and that actions for personal injuries should be subject to a shorter period than six years. The variations from the Report arise only in matters of detail. In particular, one variation concerns the recommendation that though actions for personal injuries were to be subject to a two-year period, a court should have power in its discretion to extend the period to not more than six years in special cases. The new Act provides that the period shall be three years, but makes no mention of any power for it to be increased by the court. Limitation is a subject full of pitfalls, and if justice is to be done the periods applicable must be certain. No earlier Act, except in very particular cases, had provided for extension by the court, and perhaps it is as well that a defendant should in general be able to calculate his liability to be sued by reference to a statute, rather than have to be at the mercy of a discretion vested in the court. At any rate, the Legislature has seen fit to preserve the principle of absolute periods and has not included the power proposed by the Tucker Committee.

The new Act has really done two things. First, it has removed the anomalous protection which certain persons or bodies have hitherto enjoyed, either because they were public authorities or because what they had done was done "in pursuance or execution or intended execution of an Act of Parliament." Second, it has provided a uniform period of three years, whoever is the defendant, where the damage complained of in any action of tort or contract includes a claim for personal injuries. The rest of the Act is taken up with details that are necessary to and consequential upon its main theme.

Public Authorities

Public authorities have been dealt with easily. The enactments which gave them their special protection have simply been repealed. These were the Public Authorities Protection Act, 1893, which provided for a period of only six months, and s. 21 of the Limitation Act, 1939, which increased the period for England and Wales to twelve months. The earlier law had been fruitful of litigation on the construction of the sections concerned and their effect upon certain activities, and had given rise to fine distinctions and anomalies. These are now happily gone. It will no longer matter that the activity carried on by a body is a subsidiary one to its main function (see *Bradford Corporation* v. *Myers* [1916] 1 A.C. 242) nor that a school is managed under a charitable scheme instead of under the Education Acts, when its managers would have been protected (cf. *Woodward* v. *Hastings Corporation* [1945] K.B. 174 with *Griffiths* v. *Smith* [1941] A.C. 170). Gone also are the difficulties that arise as between joint tortfeasors on the question when a right to contribution arises and the injustice that comes from one joint tortfeasor being a public authority. These are only some of the anomalies that the removal of this special protection will cure. The period applicable will now be the same as in the case of a private defendant and only in a very few cases, which are mentioned later, will the Crown, which could often claim to be acting as a public authority, have any privilege at all.

While s. 1 of the new Act relieves public authorities of their privileged position, it also destroys the special periods which hitherto had been enjoyed by the bodies controlling the nationalised industries. As each industry was nationalised a body was set up to control it, and the nationalising statute in each case enacted that s. 21 of the Limitation Act, 1939, should not apply, but that in actions at common law they should have a special period of three years. The relevant sections providing these periods have now been repealed and the National Coal Board, the Gas Council with its area boards, the Electricity Authority with its area boards, and the Transport Commission will be on a par with private defendants. Other bodies equally affected are the development corporations set up under the New Towns Act, 1946, and B.E.A. and B.O.A.C., who had lately acquired protection under s. 3 of the Air Corporations Act, 1953. Section 1 of the Act of 1954 similarly deprives persons of their period of six months who are likely to be sued in respect of things done by them under the Army Act and the Air Force Act. The limitation sections in those Acts are repealed both as originally enacted and as extended by the Visiting Forces Act, 1952.

Personal Injuries Claims

The other main change brought about by the new Act is the standardisation of the periods applicable to actions where there is a claim for damages for personal injuries. The period will now be three years however the claim is made, and it will apply whether the action arises under the Fatal Accidents Act, 1846, or survives against a deceased person's estate under the Law Reform (Miscellaneous Provisions) Act, 1934. This general effect is produced by the incorporation into s. 2 (1) of the Limitation Act, 1939, of a proviso in the following terms:—

> "Provided that, in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years."

This proviso sets out reasonably comprehensively all the ways in which a claim for damages for personal injuries would normally arise but by its terms it omits actions based on trespass to the person. The Tucker Committee made it clear that they did not intend that sort of action to be included and expressly excluded malicious prosecution, false imprisonment and defamation. The result is that the three-year period will only apply where the gist of the action is damage or breach of a duty and not when it is some direct act of the defendant. Trespass and negligence often overlap and it is equally often advisable to plead a case in negligence rather than trespass. This new period of limitation was designed for the particular case of accidents where someone

has obviously suffered some injury. It is unlikely in such cases that a plaintiff would wait as much as six years, but if he does fail to come within the three-year period he will have to rely solely on trespass. That will not always be available to him and it would perhaps be best if he were to make his claim within the three years. It must at present be customary to investigate such claims quickly in view of the short period available against public authorities: with the removal of their protection there seems to be no reason why in the future any laxity should enter into the investigation. "Personal injuries" are defined by the insertion of a new paragraph into the definition section of the Act of 1939 (s. 31 (1)) in the following terms: "'personal injuries' includes any disease and any impairment of a person's physical or mental condition." This is the definition used in the Law Reform (Personal Injuries) Act, 1948, and no difficulty ought to arise in practice upon its construction.

Survival of Causes of Action

Two sections of the new Act deal with the Fatal Accidents Act, 1846, and the Law Reform Act of 1934. The period of "twelve calendar months" under the Act of 1846 has been increased to "three years" by s. 3 and no question should arise on that. By the Act of 1934, actions of any kind can survive against a deceased person's estate, except those expressly excluded by it, but before the passing of the Act of 1954 the action had to be pending at the date of death and to have accrued not earlier than six months before the death. The provision about the six months is now repealed so that the period will in future be six years in most cases, but three years if the action is for personal injuries. It is to be noted that whenever the cause of action accrued before the death, proceedings must still be started within six months after the personal representatives took out representation (s. 1 (3) of the Act of 1934). The duties of personal representatives would be impossible without such a provision and the new Act has made no alteration in this respect.

Persons under Disability

Consequential upon the reduction of this period to three years, a corresponding reduction has been made in the provisions about persons under a disability. By s. 22 of the Act of 1939, the period does not begin to run, if the proposed plaintiff is under a disability (i.e., an infant or of unsound mind) when the cause of action accrued, until the disability either comes to an end or the person dies. Then the period used to be either six years or, if the proposed defendant was a public authority, one year. The new Act has abolished the periods for public authorities, so that the extension for one year can have no further application, but the six-years extension will remain. Section 2 (2) of the new Act has introduced into s. 22 of the Act of 1939 a new subsection which enacts that, where an action for personal injuries has accrued in the circumstances set out in the new proviso to s. 2 (1), the period will be only three years after the end of the disability or the death of the person under disability. Paragraph (*b*) of the subsection provides that the disability section shall not apply in the case of actions for personal injuries "unless the plaintiff proves that the person under the disability was not at the time when the right of action accrued to him in the custody of a parent." Proviso (*d*) to s. 22 is in similar terms, but relates only to actions brought against public authorities. That proviso will have no further operation, but the new para. (*b*) will and only when the action is for personal injuries. In no other action will the "custody of a parent" be of importance and in all other cases the period applicable after disability ceases will be the same as before.

The Crown

The Limitation Act, 1939, expressly provided that the Crown should be bound, except in a few specified cases. As was to be expected, the Crown would very often be able to set up a shorter period of limitation because of its position as a public authority. The new Act again provides that the Crown shall be bound, and this means that more than ever before it is in the same position as a private individual. It does retain a few privileges, particularly in the case of revenue (proviso to s. 30 (1) of the Act of 1939), and the new Act creates two more. First, the two-year period under s. 8 of the Maritime Conventions Act, 1911, for damage caused by vessels to each other (with a special one-year period for enforcing contribution) is now made to apply to all H.M. ships, whether they are ships of war, or ships for the time being appropriated to the service of the armed forces of the Crown or to the service of the Post Office. The other privilege is a period of twelve months within which proceedings for loss or damage to inland registered letters must be started, and it will be seen that this period begins on the date when the letter was posted and not when the loss or damage occurred.

Transitional Provisions

Section 7 (1) contains some transitional provisions which will in many cases extend a period that was already running before the date of the passing of the Act (4th June, 1954). It provides that where a period was already running it shall expire either when it would have expired but for the provisions of the new Act, or at the time when it would have expired if all the provisions of the new Act had at all material times been in force, whichever is the later. This means that in an extreme case as much as five and a half years could be added on to a period; for instance, the repeal of s. 170 of the Army Act could extend to six years a six-month period that was just about due to expire on 4th June. A more common case would be an extension from twelve months to three years of an action under the Fatal Accidents Act, 1846; but if the action was maintainable apart from that Act even though the claim was for damages for personal injuries the period would be the full six years and the reduction to three years would not affect it. The period under the old law is the longer, and it will prevail. Section 7 (2) will also have the effect of extending a period that was already running on 4th June. It provides that in the case of a person dying after the passing of the Act the repeal of the six-month limitation period under the Law Reform (Miscellaneous Provisions) Act, 1934, shall have effect whether the cause of action accrued before or after the passing of the Act. Without such a provision it might have been uncertain what causes of action would survive. It will now happen that if a person dies in, say, July, actions accruing against the deceased since 1948 will survive against his estate. Under the old law, causes of action arising before January of this year would have been barred. Even if the action is for personal injuries the three-year period will not apply in this case, since under s. 7 (1) a plaintiff would have had six years if the deceased had not died before the action was brought. The three-year period will of course apply if the action accrues after the passing of the Act since the transitional provisions will not operate upon that.

The new Act will be a beneficial one to the private litigant in so far as his actions against public authorities are concerned and he will doubtless welcome the simplification of this part of the law. The sections concerning personal injuries ought to work in practice, but it is possible that they will engender further attempts to define the boundaries between trespass, nuisance and negligence more closely.

L. A.-S.

"VACANT POSSESSION" IN CONTRACTS FOR THE SALE OF LAND

"VACANT possession" is one of those everyday expressions of which everyone knows the meaning. The meaning of "possession" is covered by abundant judicial authority and statutory definition, because possession is a matter of law. The comparative scarcity of authority on the meaning of "vacant possession" is no doubt due to its meaning depending as much on matters of fact as on matters of law: when a purchaser buys with vacant possession what he bargains for is not merely the right in law to possession of the property but also the power in fact to exercise the right.

WHERE THE CONTRACT PROVIDES FOR "POSSESSION"

In cases where, for example, the property is known to be subject to a lease and all that is bargained for is possession of the property, the vendor fulfils his obligation if he effectively conveys to the purchaser the right to receive the rents and profits. Thus, in *Lake* v. *Dean* (1860), 28 Beav. 607, the plaintiff agreed to sell an orchard to the defendant. The orchard was described as being in the occupation of *X*. The contract provided that the purchaser was to have possession on the day fixed for completion. It was held that "possession" did not mean "personal occupation" and the defendant was compelled to complete, although by reason of the tenancy of *X* the plaintiff was unable to put the defendant into actual physical occupation of the land.

Section 205 (1) (xix) of the Law of Property Act, 1925, defines possession as including the receipt of rents and profits or the right to receive the same, if any.

Nevertheless, where property which is in fact vacant is contracted to be sold without reference to vacant possession, and equally without reference to any tenancy or other encumbrance to which the property is subject, there is impliedly a contract that vacant possession will be given on completion (*Cook* v. *Taylor* [1942] Ch. 349).

Where a landlord grants in the lease to a tenant of part of the premises an option to purchase the whole of the premises, and the option provides that the lessee is to accept without objection the title of the lessor to the premises, and later the lessor grants a lease of the remainder of the premises to a third party, then, on the exercise of the option by the lessee, he is entitled to have a conveyance of the fee simple of the premises to him with vacant possession: the condition as to title refers to the lessor's title at the date of the lease, and he cannot force on the lessee-purchaser a title subject to an encumbrance created after the date of the lease (*Re Crosby's Contract* [1949] 1 All E.R. 830). Where the property is not vacant but the vendor is in occupation, the contract providing that the purchaser will be entitled to "possession or receipt of rents and profits," the vendor is bound to give vacant possession on completion. Further, he will not be allowed to give evidence of any alleged contemporary parol agreement by which he was to retain possession and to pay the purchaser rent by way of interest on the purchase-money (*Anker* v. *Franklin* (1880), 43 L.T. 317).

VACANT POSSESSION

The meaning of "vacant possession" will be considered under two heads:—

(1) There must be no other person occupying or claiming the right to occupy the land, either on his own account or for another.

(2) There must be available to the purchaser actual unimpeded physical possession of the land.

No adverse occupier

The adverse occupier or claimant may be a lessee claiming under a lease, or the statutory tenant of a dwelling-house to which the Rent Restrictions Acts apply. He, or she, may be a licensee with a right to remain in occupation, as in *Errington* v. *Errington* [1952] 1 K.B. 290, or a deserted wife in occupation of the matrimonial home. In all such cases the vendor cannot offer vacant possession until he has succeeded in ejecting the occupier or claimant, either by persuasion or by legal process or even by purchase.

Occupation by a person having no claim of right prevents the giving of vacant possession (see *Engell* v. *Fitch* (1869), L.R. 4 Q.B. 659, where mortgagees selling under their power of sale failed to give vacant possession because of their unwillingness to incur the expense of an action for ejectment against the mortgagor, who refused to quit).

The converse case, where there is an adverse claim to occupy the premises without actual physical occupation, is exemplified by the requisitioning cases in the late war. In *James Macara, Ltd.* v. *Barclay* [1945] K.B. 148, which reached the Court of Appeal, a contract was entered into for the sale of a house and land by the defendant to the plaintiffs. After contract but before completion the Ministry of Works served on the vendor a letter stating that it was essential in the national interest to take possession of the property, and stating that the letter was to be regarded as formal notice that possession was being taken. The vendor informed the purchasers of the receipt of the notice, whereupon the purchasers claimed to rescind the contract and asked for return of the deposit, as the vendor would be unable to give vacant possession of the property. No actual entry on the land was ever made pursuant to the notice. In an action by the purchasers claiming return of their deposit it was held that the power to enter into possession conferred under the Defence (General) Regulations, 1939, was effectively exercised by the Ministry, actual entry by the authority being unnecessary, and that, accordingly, on the date fixed for completion the defendant could not give the plaintiffs vacant possession of the property.

Unimpeded physical possession

The second head under which the meaning of vacant possession is to be considered is that the vendor must give the purchaser actual unimpeded physical possession of the land. The leading case is the recent one of *Cumberland Consolidated Holdings, Ltd.* v. *Ireland* [1946] K.B. 264, where a quantity of rubbish was left in the cellar of a building bought by the plaintiffs. The Court of Appeal held that the rubbish formed no part of the property sold and constituted a substantial interference with the enjoyment of the right of possession. The covenant for vacant possession was not limited to a transfer of the property free from any claim by the vendor or a third person such as a tenant or licensee, but extended also to actual unimpeded physical possession. The impediment must, however, be one which substantially prevents or interferes with the enjoyment of the right of possession of a substantial part of the property.

The court emphasised that cases such as the *Cumberland* case must necessarily be rare and can only arise in exceptional circumstances, as there would normally be waiver or acceptance of the position by the purchaser.

FAILURE TO GIVE VACANT POSSESSION

(A) *Damages*

The normal rule that the purchaser cannot recover damages for loss of his bargain, but is limited to recovery of his deposit and expenses incurred in investigation of title, which applies where the vendor is prevented from carrying out his bargain only by a defect in title (*Bain* v. *Fothergill* (1874), L.R. 7 H.L. 158) does not apply where there is a failure to give vacant possession. Whether any sum other than the deposit and costs of investigating title can be recovered will depend on the circumstances of each case, but the following propositions would seem to be supported by decided cases :—

(1) If the vendor fails to do everything possible to make a good title, as in *Engell* v. *Fitch*, *supra*, the purchaser can recover as damages his loss of profit on a resale and the costs of the conveyance to his purchaser.

(2) If the purchaser has agreed to let the property from a date after that fixed for completion, but at that date someone else is in possession, and remains so until ejected by the sheriff, and as a result of the adverse occupation the purchaser's tenant refuses to take the property as he cannot have vacant possession, the purchaser can recover as damages an amount equal to the rent lost, as compensation for the loss of a tenant (*Royal Bristol Permanent Building Society* v. *Bomash* (1887), 35 Ch. D. 390).

(3) If a house within the Rent Restrictions Acts is sold subject to a tenancy, the vendor undertaking that the purchaser will have vacant possession on a certain date, but the tenant refuses to quit at all, the purchaser can recover the difference between the value of the house with vacant possession and the value of the house subject to the tenancy, and, if he has had to buy another house for his own occupation, his conveyancing costs and the stamp duty in connection with the second purchase (*Beard* v. *Porter* [1947] 2 All E.R. 407). Where the vendor has failed to implement an undertaking to provide suitable alternative accommodation for a controlled tenant the measure of damages is the cost of providing such accommodation (*Tolman* v. *Dyson* [1952] C.L.Y. 3606).

(4) In cases where the complaint is that unimpeded physical possession has not been given, the measure of damages is the cost of securing unimpeded possession, for example, the cost of removing rubbish deposited on the premises (*Cumberland Consolidated Holdings, Ltd.* v. *Ireland*, *supra*).

(B) *Specific Performance*

The court will not compel specific performance against a purchaser where the vendor is unable to offer vacant possession in fulfilment of his contract : the purchaser can rescind and recover his deposit (*Cook* v. *Taylor*, *supra* ; *James Macara, Ltd.* v. *Barclay*, *supra*). See also *Re Crosby's Contract*, *supra*.

If the contract stipulated that possession is to be given at a definite date the purchaser can insist that both time and vacant possession are of the essence of the contract : if the purchaser agrees to extend the time in a case where vacant possession is of the essence of the contract he can refuse to complete at the end of the extended time if vacant possession cannot then be given (*Nokes* v. *Lord Kilmorey* (1847), 1 De G. & Sm. 444).

H. N. B.

VALETE, SECTIONS FOUR !

WHEN the Law Reform (Enforcement of Contracts) Bill received the Royal Assent on June 4th, 1954, anachronisms in the English law of contract dating from the seventeenth century were swept away. No tears will be shed because guarantees are the only form of contract still requiring written evidence under s. 4 of the Statute of Frauds or that s. 4 of the Sale of Goods Act, 1893, has been repealed. These two sections have long been the bane of judges and jurists and the subject of recommendations for repeal of two Law Reform Committees (Cmd. 5449 and Cmd. 8809).

Section 4 of the Statute of Frauds provided that certain contracts would not be enforceable without the written evidence of a note or memorandum in writing signed by the person (or his agent) against whom it was sought to enforce it. The contracts were :—

(1) A special promise by an executor or administrator to answer damages out of his own estate.

(2) Any promise to answer for the debt, default or miscarriage of another person.

(3) An agreement made in consideration of marriage.

(4) A contract for the sale or other disposition of land or any interest in land (repealed and re-enacted as s. 40 of the Law of Property Act, 1925).

(5) An agreement not to be performed within the space of one year from the making thereof.

Section 4 of the Sale of Goods Act, 1893, provided that a contract for the sale of goods of the value of £10 or upwards should be unenforceable unless the buyer accept part of the goods so sold and actually receive the same, or give something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract was made and signed by the party to be charged or his agent in that behalf.

As regards the Statute of Frauds, there had grown up throughout the centuries a body of case law, the tendency of which had been to save contracts from the effects of non-compliance with statutory requirements. For instance, the courts have construed in a restrictive manner the definition of contracts " not to be performed within one year." This resulted in great difficulty and artificial rules (see *Hanau* v. *Ehrlich* [1912] A.C. 39). If a contract is for an indefinite time, but can be determined by either party with reasonable notice within the year, the statute did not apply. In applying the statute to contracts to answer for the debt, default or miscarriage of another, the courts have limited it to contracts of guarantee and refused to extend it to contracts of indemnity (*Birkmyr* v. *Darnell* (1704), 1 Salk. 27). The form of the writing required by the statute has been affected by the " authenticated signature " fiction, i.e., provided the writing contained the name or initials, and the party recognised the writing as truly expressing the contract, the court would hold it duly signed. The courts have also applied to writings under the statute the equitable jurisdiction to rectify documents, and, in order to save contracts which would otherwise have been unenforceable, have tended to construe several documents together as one. It was with reluctance that the minutes of companies purporting to evidence appointments to their staff were rejected as failing to satisfy the statute in *James* v. *Thomas H. Kent & Co., Ltd.* [1951] 1 K.B. 551 and in *Pocock* v. *A.D.A.C., Ltd.* [1952] 1 T.L.R. 29.

The courts have also applied the common-law principle of quasi-contract to contracts not complying with the statute. Thus actions have been successfully brought to enforce

obligations in respect of money paid at the request of another, for money had and received, in respect of obligations arising upon a *quantum meruit* or upon an account stated.

Contracts governed by s. 4 of the Sale of Goods Act were also subject to the same zealous scrutiny by the courts, both as regards the contracts to which the section applied and the form of evidence required. The difficulty of establishing whether a contract was one for the sale of goods and thus within the section, or one for the supply of labour and materials, was apparent in *Lee* v. *Griffin* (1861), 1 B. & S. 272, where the supply of a set of artificial teeth was held to be a sale of goods. The difficulty arose again over the painting of a picture—*Robinson* v. *Graves* [1935] 1 K.B. 579—but the Court of Appeal resolved it by adopting as a test whether the resulting chattel or the skill of its creator was of the paramount importance. A difficulty regarding the assessment of the value of property sold in order to determine whether it was within the section or not arose in *Van Cutsem* v. *Dunraven* (1954), *The Times*, 15th January. It was there held that a one-fortieth share (undivided) in a stallion was of no value, and a contract for the sale of it was not required to be evidenced in writing.

As regards the form of memorandum required to satisfy s. 4 of the Sale of Goods Act, the courts have, as in the case of s. 4 of the Statute of Frauds, adopted a liberal interpretation. In *Wilson* v. *Pike* [1948] 2 All E.R. 267 a memorandum signed by the plaintiff's auctioneer as agent for the defendant was held sufficient. In *L. D. Turner, Ltd.* v. *R. S. Hatton, Ltd.* [1952] 1 T.L.R. 1184 a letter to a third party coupled with a confirmation notice containing all the terms of the agreement to purchase was held to be a sufficient memorandum.

A Law Revision Committee was appointed in 1934 to consider (*inter alia*) the possibility of amendment or repeal of these sections, and the report (Cmd. 5449), published in 1937 summarises (para. 9, pp. 6–8) the chief criticisms of s. 4 of the Statute of Frauds, most of which also applied to s. 4 of the Sale of Goods Act. These were as follows :—

> " (1) First and foremost, it is urged that the Act is a product of conditions which have long passed away. At the time when it was passed, essential kinds of evidence were excluded (e.g., the parties themselves could not give evidence), and objectionable types of evidence were admitted (e.g., juries were still in theory entitled to act on their own knowledge of the facts in dispute). It was an improvement on this state of affairs to admit the evidence of the parties, even though only to the extent that such evidence was in signed writing. Today, when the parties can freely testify, the provisions of s. 4 are an anachronism. A condition of things which was advanced in relation to 1677 is backward in relation to 1937.
>
> (2) 'The Act,' in the words of Lord Campbell, ' promotes more frauds than it prevents.' True, it shuts out perjury ; but it also and more frequently shuts out the truth. It strikes impartially at the perjurer and at the honest man who has omitted a precaution, sealing the lips of both. Mr. Justice FitzJames Stephen (writing of s. 17, but his observation applies equally to s. 4) went so far as to assert that ' in the vast majority of cases its operation is simply to enable a man to break a promise with impunity because he did not write it down with sufficient formality.' (*Law Quarterly Review*, 1885, Vol. 1, p. 1.)
>
> (3) The classes of contract to which s. 4 applies seem to be arbitrarily selected and to exhibit no relevant common quality. There is no apparent reason why the requirement of signed writing should apply to these contracts, and to all of them, and to no others.
>
> (4) The section is out of accord with the way in which business is normally done. Where actual practice and legal requirement diverge, there is always an opening for knaves to exploit the divergence.
>
> (5) The operation of the section is often lopsided and partial. *A* and *B* contract : *A* has signed a sufficient note or memorandum, but *B* has not. In these circumstances *B* can enforce the contract against *A*, but *A* cannot enforce it against *B*.
>
> (6) The section does not reduce contracts which do not comply with it to mere nullities, but merely makes them unenforceable by action. For other purposes they preserve their efficacy (for what other purposes precisely, is doubtful ; see *Law Quarterly Review*, 1936, Vol. 51, p. 49). Anomalous results flow from this : e.g., in *Morris* v. *Baron & Co.* [1918] A.C. 1, a contract which complied with the section was superseded by a second contract which did not so comply. It was held that neither contract could be enforced : the first, because it was validly rescinded by the second, the second because, owing to its purely oral character, no action could be brought on it. This was a result which the parties could not possibly have intended.
>
> (7) Apart from its policy the Statute is in point of language obscure and ill-drafted. ' It is universally admitted,' observed the original editor of Smith's Leading Cases, ' that no Enactment of the Legislature has become the subject of so much litigation.' This could hardly have been so if its terms had been reasonably lucid."

When the committee further came to consider the provisions of the sections from the point of view of importance of the subject-matter and the time intervening between contracting and complete performance of the contract, it came to the conclusion that the retention of these provisions was illogical. The illogical character was also shown by the exclusion of the equitable doctrine of part performance (i.e., the doctrine that acts done in part performance of the contract will excuse the absence of signed writing) from contracts not to be performed within one year from the making, even if such contracts were also contracts for the sale of goods of a value of £10 or upwards (*Prested Miners Co., Ltd.* v. *Garner, Ltd.* [1910] 2 K.B. 776).

In the light of these criticisms the committee recommended the repeal of both sections. A minority, however, recommended the retention of writing for contracts of guarantee.

The Law Reform Committee set up in 1952 to consider whether these recommendations should be carried into effect issued a report (Cmd. 8809) in agreement with the earlier committee, except that it adopted the minority report on contracts of guarantee. (This follows the pattern of most modern codes which, although proclaiming the principle of formless obligation, have recognised that suretyship must be created by written declaration.)

The new Act carries these recommendations into effect. By s. 1, the whole of s. 4 of the Statute of Frauds, except as it relates to a promise to answer for debt, default or miscarriage of another, is repealed. By s. 2, s. 4 of the Sale of Goods Act is repealed. The repeals relate to any promise, agreement or contract, whether made before or after the commencement of the Act. The English law of contract is thus rid of anomalies which beset it so long, and lawyers and businessmen alike will echo a heartfelt " *Valete* Sections Four ! "

R. M. H.

Costs

BASES OF TAXATION

If apology is needed for returning to this subject of the difference between the various bases upon which costs are taxed, it is that there still appears to be some confusion of mind amongst practitioners as to their clients' entitlement when it comes to interpreting the terms of a document, be it an agreement, bond or order of the court. Documents, even summonses for consent orders on the settlement of an action, are still seen which provide for the payment of costs in terms which are lamentably vague and ambiguous, and which do not always give the client all that he expects to get.

It cannot be stressed too strongly that any provision, no matter where or in what circumstances it appears, which provides for the taxation of costs in which more than one party is interested is, *prima facie*, a taxation as between party and party, and to get anything more than costs on that basis would involve the party seeking the additional remedy in proving that he is entitled to it either upon some well recognised principle or under some document plainly and unambiguously expressed.

The matter came before the courts once again in *Re Adelphi Hotel (Brighton), Ltd.* [1953] 1 W.L.R. 955; 97 Sol. J. 489, when Vaisey, J., was compelled to disillusion a bank as to the meaning of a term in its mortgage security relating to costs. In that case the term certainly appeared to be very wide and comprehensive, for it provided that the mortgage secured payment, *inter alia*, of "all costs, charges and expenses incurred or paid by the bank in relation to the negotiation for and preparation, completion, realisation and enforcement of" the security. The bank obtained judgment (by consent) for the amount of the outstanding loan and interest, and claimed that this provision in the mortgage with regard to the costs of enforcing the security gave it the costs against the mortgagee on the basis of a complete indemnity, basing its contention on the very comprehensive terms of the clause which provided for *all* costs of enforcing the security. It accordingly asked for an order for taxation on a solicitor and own client basis.

The learned judge found himself unable to depart from the well established rule, referred to above, that costs to be taxed between one party and another means, unless otherwise specifically defined, costs on a party and party basis. It is true that in a debenture-holders' action, where the assets are insufficient for the payment of the debentures in full, the rule laid down in *Re New Zealand Midland Railway Co.* [1901] 2 Ch. 357 is that the plaintiff is entitled to his costs on a solicitor and client basis, and not on a party and party basis; but that rule could have no relevance to the *Adelphi Hotel* case, even if it applied in principle (which it did not), since there were funds in court in the *Adelphi Hotel* case sufficient to meet the amount of the judgment debt and interest and the costs.

The learned judge further held that the principle of party and party taxation applied not only to the costs of the action in which the judgment was obtained, but to all other costs relating to the realisation and enforcement of the security, whether the steps taken to that end involved litigious action or not, on the ground that the expression "party and party" does not necessarily imply the existence of a suit or other litigation, and that where one party is under an obligation to pay the costs of another party then the obligation only extends to the party and party costs.

A pause might well be made here to inquire into the meaning of the expression "party and party costs." No statutory definition of this term will be found, but in *Smith* v. *Buller* (1875), L.R. 19 Eq. 473, Malins, V.-C., stated, in relation to the costs of litigation: "The costs chargeable under a taxation as between party and party are all that are necessary to enable the adverse party to conduct the litigation, and no more. Any charges merely for conducting litigation more conveniently may be called luxuries, and must be paid by the party incurring them." This definition dealt with the costs of litigation, but, as Vaisey, J., pointed out in the *Adelphi Hotel* case, *supra*, the expression "party and party" does not of itself imply litigation, and even where there is no actual litigious proceeding the definition of Malins, V.-C., applies equally well.

Accordingly, "all the costs, charges and expenses incurred or paid by the bank in respect of realising and enforcing the security" means all the costs, charges and expenses on a party and party basis, and is not a complete indemnity for whatever costs the bank may have incurred. It might be advantageous to consider how this would work out in practice, and for this purpose we will trace the probable course of the matter. In the first place, there are the interviews between the bank and its solicitors discussing the line of action to be taken, and possibly a conference with and an opinion from counsel on the matter. These will be the preliminary steps prior to the action being taken to enforce the security. There are probably also letters written to the mortgagors with regard to the payment off of the mortgage, and negotiations for time in which to pay, and further advice to the bank in relation thereto. The whole of these costs does not fall within the definition of party and party costs, and the costs relating to the advice to the bank and possibly the counsel's fees would be disallowed as not being recoverable on a party and party basis, since these are solicitor and client costs.

Similarly, after the action in which judgment is obtained, there will be the costs relating to the discharge of the mortgage, and here again, on a party and party basis, nothing would be allowed beyond the costs absolutely necessary for the bare discharge, and any advice to the bank as to the terms of the discharge would fall within the description of solicitor and client costs and would not be recoverable from the mortgagor; although it is true that in certain public Acts which provided for the payment of full costs, charges and expenses incurred in and about the action the expression was held to mean not only the party and party costs of the action (see *Avery* v. *Wood* [1891] 3 Ch. 115), but also the costs of a preliminary opinion (see *House Property Co. of London* v. *Whiteman* [1913] 2 K.B. 382), and it is reasonable to assume that the expression "all costs, charges and expenses incurred or paid by the bank" would be sufficient to cover a preliminary opinion before the actual steps for the realisation of the security were taken.

So much then for the "costs, charges and expenses incurred or paid by the bank in relation to the . . . realisation and enforcement of" the mortgage. It remains to consider the rights of the bank in relation to the remainder of the costs for which provision is made in the clause under consideration, namely, the costs, charges and expenses of the bank in relation to the negotiations for and preparation and completion of the mortgage. Vaisey, J., expressed no definite view as to how these costs should be ascertained, beyond the view, stated earlier, that as every taxation of costs in which more than one party is concerned is a taxation as between party and party, any other basis is only justified when the party asking for it can show that he is entitled to it either upon some well

recognised principle or under some contract plainly and unambiguously expressed. If, therefore, there is no recognised principle or no contract plainly and unambiguously expressed which takes these costs out of the general rule, then clearly they should be taxed only on a party and party basis.

It is customary for the mortgagor to pay the mortgagee's solicitor's costs of the mortgage, but there is no established custom that the mortgagor shall pay anything more than the costs, to adopt the words of Malins, V.-C., quoted above, necessary for the preparation and completion of the mortgage, and here again any charges for conducting the business more conveniently might well be within the definition of luxuries to be paid for by the party incurring them.

In short, except in a case where there is an express agreement to give the mortgagee a complete indemnity for his solicitors' costs, all that the mortgagor could be called upon to pay is the " party and party " costs of negotiating, preparing and completing the mortgage, and in the *Adelphi Hotel* case there was clearly no such indemnity, nor, indeed, is there in the majority of cases which have come to notice.

If, therefore, it is the intention of the parties, whether mortgagor and mortgagee, or plaintiff and defendant in an action which is being settled, or in any other case where one party's costs are to be borne by the other party, that the receiving party is to have a complete indemnity for his costs, then the document embodying the provision must be so drawn as to provide for this plainly and unambiguously, and the best way of doing so is to use the term which has a well-established meaning in the courts and to provide that the costs, charges and expenses shall be taxed or agreed and paid on a solicitor and own client basis. Anything short of this runs a grave danger of being construed as imposing a liability on a party and party basis only.

J. L. R. R.

A Conveyancer's Diary

STATUS OF CHARGEE BY WAY OF LEGAL MORTGAGE

UNDER s. 146 (4) of the Law of Property Act, 1925, where a lessor is proceeding to enforce a right of forfeiture under any covenant in a lease any person claiming as underlessee any interest in the property comprised in the lease may apply to the court, and on such application the court may vest the property comprised in the lease, for any term not exceeding that granted by the original sub-lease, in the applicant if he can substantiate his claim as underlessee. A mortgagee by sub-demise of leasehold property is clearly an underlessee for the purposes of this provision, and it has been the general view that a chargee by way of legal mortgage is in the same position as a mortgagee by sub-demise—see, for example, Wolstenholme & Cherry's Conveyancing Statutes, 12th ed., p. 488 (note). This view is based on s. 87 (1) of the Act, which provides that where a legal mortgage is created by a charge by deed expressed to be by way of legal mortgage, the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and persons in receipt of rents and profits) as if (*a*) in the case of a mortgage of a fee simple estate, a term for three thousand years had been created in his favour, and (*b*) in the case of a mortgage of leaseholds, a sub-term, less by one day than the term vested in the mortgagor, had been created in his favour.

Two recent decisions have now confirmed this view. The first of the two cases, *Re Good's Lease* [1954] 1 W.L.R. 309, and p. 111, *ante*, if not quite on the point, was very near it. One *W*, the assignee of a lease, asked *T* to guarantee his overdraft at a bank, and as security deposited with *T* the lease and the assignment. *W* also agreed in writing, in the event of *T* being called upon to pay any sum under the guarantee, to execute " a proper legal charge or mortgage of the property " to secure all moneys for the time being paid by *T* under the guarantee. *T* was subsequently called upon by the bank to make a payment under the guarantee and did so, and he thereupon became entitled under the instrument executed by *W* to have executed a proper legal charge or mortgage in his favour. *W* having become bankrupt, the lessor commenced proceedings against his trustee for possession and ancillary relief, and in this action *T* applied under s. 146 (4) to be relieved against the forfeiture and to have the premises vested in him for the residue of the term for which they were held.

The expression " underlease " is defined in s. 146 (5) as including an agreement for an underlease where the underlessee has become entitled to have his underlease granted. Harman, J., observed that it was comparatively familiar law that relief under this section had been given in the past to mortgagees by sub-demise, and that, in the learned judge's view, was not surprising " because a mortgagee by sub-demise has, of course, a term vested in him." But no authority apparently existed for similar relief being granted to " a person not having a legal term or any term vested in him and therefore having no estate in the property, though in a sense he has an interest in it, as having a right to a charge on it."

Harman, J., held that *T* was a person who came within the scope of s. 146 (4) by virtue of s. 146 (5) in one of two ways. First, the effect of s. 87 (1) of the Act was that, as between himself and *W*, *T* was in the same position as if he had had a mortgage by sub-demise, and it could not make any difference that the equitable chargee (which was *T's* position until the execution of a legal mortgage or charge) was entitled under the instrument executed by *W* to have a charge by way of legal mortgage. " He is," the learned judge went on to say, " in the same position as though he were entitled to have a mortgage direct by sub-demise." Secondly, and as an alternative ground, the learned judge held that as what *T* was entitled to have executed in his favour was " a proper legal charge or mortgage," he could choose which form his security should take and could ask for a mortgage by sub-demise from *W* or *W's* trustee in bankruptcy. In that way *T* was a person entitled to have an underlease granted to him for the purposes of s. 146 (5).

The second of these two reasons was sufficient to dispose of the question before the court, and there is therefore some ground for saying that what was said in connection with the first was, strictly, *obiter*. No such objection can be made to the decision in *Grand Junction Co., Ltd.* v. *Bates* [1954] 3 W.L.R. 45, and p. 405, *ante*. The plaintiff company was the lessor and the first defendant was the lessee of certain premises. The first defendant had charged her leasehold interest in the premises to the second defendant expressly by way of legal mortgage and in no other manner, and the rights of the second defendant were thus simply those of a chargee by way of legal mortgage ; there was nothing equivocal in this respect in his position, as there had been in the position of the

applicant in *Re Good's Lease*. The plaintiff company brought proceedings for forfeiture of the lease against both defendants for breach of covenant in circumstances which are not material to the question with which this article is concerned, and the second defendant applied for relief as underlessee under s. 146 (4) of the Act. The first question which arose for decision, therefore, was whether the second defendant was entitled to claim as an underlessee for the purposes of that provision. Upjohn, J. (sitting on this occasion as an additional judge of the Queen's Bench Division), held that he was so entitled.

The reasons given for this view by the learned judge, if one may say so, will commend themselves to all conveyancers. A charge by way of legal mortgage was a new form of mortgage introduced by the Law of Property Act, 1925, with a view to simplifying conveyancing, and it would be a pity to introduce subtle differences between one way of creating a charge and another way of doing the same thing unless the wording of the Act so required. If the provisions of s. 87 (1) of the Act were approached in that spirit, the chargee by way of legal mortgage was to have the same "protection, powers and remedies" as though he had a sub-demise. A lessee by sub-demise undoubtedly had the right to protect his mortgage by applying for relief under s. 146; it was a most important right, for it might be his only way of saving his security in the hands of an insolvent lessee. The effect of s. 87 was to give the chargee by way of legal mortgage the same right, because he had the same protection as a mortgagee by sub-demise. There was no ground for confining the effect of s. 87 (as, it had been argued, it should be) to "protection, powers and remedies" as between the mortgagor and the mortgagee; it was plain that the section included powers against occupiers, for it so provided by express words, and the section therefore extended to protection, powers and remedies as against all persons. The defendant was, therefore, entitled to claim under s. 146, as he had done.

There is still, however, one important difference between the respective positions of a mortgagee by sub-demise and a chargee by way of legal mortgage of leaseholds for the conveyancer to note. The argument in *Grand Junction Co., Ltd.* v. *Bates* that s. 87 did not extend to confer any protection on the chargee as against any person other than the mortgagor was based largely on the proposition that to extend it in the way sought to be established by the second defendant would put the chargee by way of legal mortgage in an anomalous position. It was generally supposed (there is no authority on the point) that a lessee does not have to obtain the consent of his lessor to the creation of a charge by way of legal mortgage under the common-form covenant against assigning, underletting or parting with possession of the premises without the consent of the landlord; the consent of the landlord, on this view, is only required if the prohibited transactions specifically include the creation of a charge. It was argued that if a chargee by way of legal mortgage enjoys this advantage, it would be wrong to treat him for another purpose as on a footing with a mortgagee by sub-demise, that being a transaction which clearly comes within the prohibition contained in this common-form clause.

This argument is not, on the face of it, easy to understand, since any advantage which may be enjoyed as a result of a charge by way of legal mortgage being held to fall outside the scope of this common-form clause is an advantage enjoyed primarily by the chargor and not by the chargee, but the point is not of substance because, if there is an anomaly here, it must now be accepted. The only reason for mentioning it now is to suggest that as there is a great deal of diversity in forms of prohibition against assigning, etc., without the landlord's consent in current use, and it is often difficult to discover why one form of words has been used rather than another, the extent of the prohibition to be used should be discussed, where that is convenient, with the lessor. The alternative is to use an entirely comprehensive clause, a practice which, to judge from experience, is comparatively rare.

"A B C"

Landlord and Tenant Notebook

SPREADING A PREMIUM

OVER the last year or two, quite a number of our readers have manifested an interest in a question arising out of the restrictions on premiums in the case of controlled property; to these, the decision in *O'Connor* v. *Hume* [1954] 1 W.L.R. 824 (C.A.); *ante*, p. 370, will be of special importance.

The facts were that the plaintiff was minded to let a country cottage for a year without granting a tenancy which would entitle the tenant to protection. The terms—or some of them—were reduced to writing as follows: "6th October, 1952. In consideration of payment by the tenant to the landlord of the sum of £47, the landlord lets and the tenant takes the cottage and appurtenances at, etc., for a period of one year from the first day of October, 1952, at a rental of 2s. per week payable in advance on the first day of each month, and thereafter (should the tenant be desirous of continuing the tenancy) on a monthly tenancy at the said rent of 2s. per week." The net rateable value of the cottage exceeded 3s. per week.

The document has, it might be said, a legal flavour; but the draftmanship was not perfect. No time was specified for payment of the £47; there was no provision for the expression of a desire to continue the tenancy; and, as most of us will know by experience, a reddendum which reserves a weekly rent but makes it payable monthly is apt to cause trouble.

The tenant, who had had some legal advice when signing the agreement, duly occupied the cottage; and it appears that some slight friction arose because it had been collaterally agreed that he should pay the £47 in produce yielded by the premises, 18s. worth every week, and the landlord was not satisfied with the produce delivered. However, the tenant remained in possession after the year was up, and refused to give up possession when the landlord served a notice to quit expiring 1st February, 1954, and that notice had expired. The landlord then sued for possession, and the defence was that the real nature of the transaction was that the cottage had been let at £1 a week, which would bring it within the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, the exclusion of tenancies at a rent less than two-thirds of rateable value effected by the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (7), not applying. The county court judge decided in favour of the landlord, and his judgment was now upheld.

A number of inquiries dealt with in our "Points in Practice" have raised the question whether a tenancy, under which the rent is less than two-thirds of the rateable value

but the tenant agrees to pay a lump sum, would fall foul of the Acts, and we have consistently expressed the opinion that, provided the grant were for a fixed period, there would be no infringement. This view, based on a consideration of *Rush* v. *Matthews* [1926] 1 K.B. 492 (C.A.) (in which the issue concerned overpayment of rent rather than security of tenure), coupled with *Regor Estates, Ltd.* v. *Wright* [1951] 1 K.B. 689 (C.A.), has now been approved by the Court of Appeal. Somervell, L.J., pointed out that there was no sham or trickery about the transaction (as had been the case in *Rush* v. *Matthews*); the landlord had made his intention plain; and while extrinsic evidence was admissible to show when and how the £47 was to be paid, the document being silent on those points, there was nothing against spreading the agreed consideration over a period of time. Somervell, L.J., declined to define "sham," but Birkett, L.J., made a useful contribution in citing *Maclay* v. *Dixon* [1944] 1 All E.R. 22 (C.A.) (landlord bought tenant's furniture and let house furnished) which applied the principle that it was not illegal for two people so to arrange matters that a statute will not affect a transaction. The difference between evasion and avoidance was, for that matter, emphasised in *Regor Estates, Ltd.* v. *Wright* by Cohen, L.J.

But extrinsic evidence which was *not* admissible was evidence which the defendant sought to adduce, showing that the "real" agreement was for a weekly tenancy at £1 a week, for this would vary or contradict the written habendum, etc. A contention that the defendant had held a protected tenancy for one year, and then held over as a statutory tenant, failed accordingly; the effect of what had happened was that he must be considered to have desired the extension, and that after September, 1953, he had simply held a monthly tenancy of the cottage at 2s. a week, which tenancy was excluded from the operation of the Rent Acts.

The landlord may be said to have made things a little more difficult (for his advisers) by inserting or agreeing to the insertion of the "and thereafter (should the tenant be desirous . . .)," etc., provision; this would enable the tenant to argue for a construction making the tenancy a monthly one not determinable before the expiration of the thirteenth month, and in this way to seek, if not security of tenure, repayment of £47 as an illegal premium. For "premium," by the Landlord and Tenant (Rent Control) Act, 1949, s. 18 (1), includes any fine or other like sum and any other pecuniary consideration in addition to the rent; and it is clear that for Rent Act purposes the payment need not bear the character of "a cash payment made to the lessor, and representing, or supposed to represent, the capital value of the difference between the actual rent and the best rent that might otherwise be obtained," the definition offered by Warrington, L.J., in *King* v. *Earl Cadogan* [1915] 3 K.B. 485 (C.A.) in which what mattered was whether sums expended by a lessee of licensed premises before surrendering a lease and accepting a new one constituted a premium for revenue purposes.

But, having regard to what was said in *Rush* v. *Matthews* about the effect of lack of defined duration, it was perhaps fortunate for the plaintiff in *O'Connor* v. *Hume* that the terms included that parenthetic "(should the tenant be desirous . . .)" which can be said to have warranted the inference that an option to renew had been agreed, so that there had been two tenancies, a fixed period one and a periodic one. The authorities show that fine distinctions have been drawn; were it not for the conditional phrase, *Cannon Brewery* v. *Nash* (1898), 77 L.T. 648, might have concluded the issue in favour of the tenant, for in that case "for one year certain and so on from year to year unless or until *the* tenancy created should be determined by either party giving to the other" notice, etc., was held to bring into being a tenancy which could not be determined at the end of the first year. In view of the absence of any provision for intimating the desire for a weekly tenancy, perhaps an analogy could even have been drawn between the position and that which obtained in *Brown* v. *Trumper* (1858), 26 Beav. 11, in which there was a seven years' term and a proviso that if notice were *not* given to determine at the end of that period, it should be "considered" a lease upon the same covenants until notice was given.

R. B.

HERE AND THERE

PRISON CONTRASTS

PRISON life in England seems to cover everything from nightmare to nirvana, from enchanted island to the castle of the Giant Despair, from stately home to slum life in the cells. Those of us who have not yet experienced the educational advantages of a sojourn "inside" are constantly bewildered by the reports that filter through the bars or float unhampered from within the barless enclosures. Hardly have we adjusted our minds to the idea of the rehabilitating and reforming influences of fashion parades and expensive art courses, when something like the Wandsworth riot jerks us out of Wonderland into the consciousness that, after all, prison life has its more serious, that is, its less insulated, side, and that it is not exclusively directed to shielding the frustrated, the maladjusted and the "difficult" from the buffetings and perplexities of real life as you and I have to live it. But, by all accounts, you get concentrated real life in Wandsworth all right. By those accounts it sounds rather like 18th century Newgate, overlaid with 19th century discipline. There you have 1,700 tough, ruthless, habitual criminals, 600 of them sleeping three to a cell, the organised gangsters being always alert to prey on the weak and unorganised, in terms of tobacco and food, by the blackmail of razor slashing or beating in the prison or after release. Against a background like that, the surprising thing is that there were only five serious casualties among the staff and another five among the prisoners, and that when the trouble started over 200 of the men went obediently back to their cells, all this at a time when there was not more than one warder available for each twelve prisoners (and probably an even smaller proportion). If one tries to imagine the course of a similar flare up, say, in an American prison, one realises why it is that the English always strike foreigners as being so gentle. The gentleness in this case is, of course, comparative. Another characteristic of the English, often remarked upon, is æsthetic insensitiveness. This, too, Wandsworth, like so many other more pretentious monuments (the Central Criminal Court, for instance) exemplifies. Built in 1851 as the Surrey House of Correction, it was once described as "having none of the fine, gloomy solemnity of Newgate, nor any of the castellated grandeur of the City Prison at Holloway, nor does it possess any feature about it that will bear comparison with the noble portcullis gateway at Pentonville." The outbuildings exhibit "all the bad taste of Cockney-Italian villas and none of the austere impressiveness that should belong to a building of a penal character." Altogether, concluded the critic, it was as "uncommanding as a Methodist Chapel." Oddly enough (in view of its present overcrowding)

it was originally built to relieve congestion in Brixton Prison where it was thought rather shocking that prisoners were sleeping three or four to a cell.

THE ABNORMAL NECESSITY

THERE are about 25,000 people in prison in England now, something like two-and-a-half times as many as before the war. Putting human beings socially, as it were, in a cupboard, is, however necessary, an arbitrary and an abnormal thing, and the strange feature of it is that the system should be maintained with violence that is only occasional, a warder struck in the face in Dartmoor, another knifed in the workshop at Cardiff or (with the careful ingenuity of the insane) the fire bomb which a Broadmoor patient recently devised, so that an electric bulb, when switched on, cascaded flaming methylated spirit across the floor. It seems even more strange when one realises that accommodation in mental hospitals is so restricted that, as happened recently at the North London magistrates' court, a feeble-minded youth with a mental age of seven may have to be sent to prison instead of being sent for treatment. That sort of case provides the background to the proposal, locally opposed, to establish at Grendon Underwood in Buckinghamshire a prison for offenders with psychopathic personalities " not sane enough to be at large and not insane enough to be in Bedlam," an application of the methods employed at Herstedvester in Denmark, where co-operation between a team of doctors and a staff of ordinary warders trained in a knowledge of mental health is said to result in cures in the proportion of 50 per cent. On another front of the war against crime it is interesting to learn that the fall in the number of young offenders is to result in the closing of four approved schools for boys. The number of 22,508 children under fourteen found guilty of indictable offences last year was the lowest since 1947.

" KINDA CRAZY "

LOOKING from outside the prison inwards is one thing; you may see it as a laboratory, or a zoo, or the theatre of a tragic drama. Looking from the prison door outwards provides quite a different prospect in terms of hopes and terrors. If you have been detached from the world long enough you look at it with a greater freshness and perception than the distracted outside world has been looking at you. And from Chicago gaol there recently emerged a man who had had every possible chance of acquiring that detached and unhampered vision. He was a very Rip Van Winkle among prisoners, for he was eighty-one years old and he had been inside for fifty-seven years, having been sentenced on 6th March, 1897, to life imprisonment for killing a policeman. (For us in England that was the year of Queen Victoria's Diamond Jubilee). So Lyman William Hall came out but not into the world he had left as a young man of twenty-four, and this is what he said: " It all seems kinda crazy to me. When I went in it was all horse and buggy. Trains burned coal and there weren't any of these things called aeroplanes. Now everything seems to be speed, more speed. I catch myself wondering whether I wasn't happier inside." But he intends to face the difficulties into which his release has landed him with fortitude. He is a reformed character. "I intend leading a good life. I don't smoke or drink. I won't have bad companions—they are the things that send you wrong. I'll make good."

RICHARD ROE.

BIRTHDAY LEGAL HONOURS

VISCOUNT

The Rt. Hon. HERWALD RAMSBOTHAM, Baron SOULBURY, G.C.M.G., G.C.V.O., O.B.E., M.C., Governor-General of Ceylon. Called by the Inner Temple, 1912.

BARON

The Rt. Hon. THOMAS MACKAY, Lord COOPER, O.B.E., Lord Justice-General of Scotland and Lord President of the Court of Session. Called to the Scottish Bar, 1915, and took silk, 1927.

PRIVY COUNCILLOR

Major Sir REGINALD EDWARD MANNINGHAM-BULLER, Q.C., M.P., Solicitor-General. Called by the Inner Temple, 1927, and took silk, 1946.

KNIGHTS BACHELOR

DONALD RICHARD ALLEN, Esq., O.B.E., M.C., clerk of the trustees, London Parochial Charities. Called by the Inner Temple, 1928.

FREDERICK SPENCER ARNOLD BAKER, Esq., Senior Master, Central Office, Supreme Court of Judicature, and Queen's Remembrancer. Called by the Inner Temple, 1909.

PATRICK FRANCIS BRANIGAN, Esq., Q.C., Attorney-General and Minister of Justice, Gold Coast. Called to the Irish Bar, 1928, by Gray's Inn, 1935, and took silk (Gold Coast), 1949.

ARTHUR WYNNE MORGAN BRYANT, Esq., C.B.E. Called by the Inner Temple, 1927.

JOHN CAMERON, Esq., D.S.C., Q.C., Dean of the Faculty of Advocates. Advocate, 1924. Advocate-Depute, 1929–36, and took silk (Scotland), 1936.

FRANCIS HARE CLAYTON, Esq., O.B.E., lately chairman and treasurer, Shaftesbury Homes and Arethusa Training Ship. Admitted 1892.

ERIC CYRIL BOYD EDWARDS, Esq., M.C., J.P. Admitted 1937.

ARTHUR TREVOR EVANS, Esq., Controller, Estate Duty Office, Inland Revenue.

WILLIAM KENNETH HORNE. Called by Gray's Inn, 1913.

WILLIAM KERR, Esq., C.B.E., J.P., D.L., Town Clerk, Glasgow. Solicitor.

ARTHUR WERNER LEWEY, Esq., Q.C., Chief Justice, Northern Rhodesia. Called by the Inner Temple, 1920, and took silk (Jamaica), 1939.

THOMAS STUART OVERY, Esq. Admitted 1921.

JOHN ROLAND ROBINSON, Esq., M.P. Called by Lincoln's Inn, 1929.

THOMAS JAMES YOUNG ROXBURGH, Esq., C.I.E., formerly a Puisne Judge of the High Court of Judicature, Calcutta. Called by Lincoln's Inn, 1932.

ROBERT WILLIAM ARNEY SPEED, Esq., Solicitor, Board of Trade. Called by the Inner Temple, 1928.

THOMAS MURRAY TAYLOR, Esq., C.B.E., Q.C., Principal and Vice-Chancellor, University of Aberdeen. Called to the Scottish Bar, 1924, Advocate-Depute, 1929, Senior Advocate-Depute, 1934, and took silk (Scotland), 1945.

The Hon. WALTER ERIC THOMAS, C.M.G., O.B.E., M.C., Q.C., Senior Puisne Judge of the High Court of Southern Rhodesia.

FRANCIS CANNON TUDSBERY TUDSBERY, Esq., C.B.E. Called by the Middle Temple, 1911.

ORDER OF THE BATH

K.C.B.

Sir JOHN ROWLATT, K.C.I.E., C.B., M.C., Q.C., First Parliamentary Counsel. Called by the Inner Temple, 1922, and took silk, 1954.

ORDER OF ST. MICHAEL AND ST. GEORGE

G.C.M.G.

The Rt. Hon. Sir OWEN DIXON, Chief Justice of the High Court of Australia. Called to the Victorian Bar, 1910, and took silk, 1922.

K.C.M.G.

ROBERT HEATLIE SCOTT, Esq., C.M.G., C.B.E., Minister at Her Majesty's Embassy in Washington. Called by Gray's Inn, 1927.

C.M.G.

CECIL STANLEY HARRISON, Esq., O.B.E., Attorney-General of Jersey. Admitted to the Bar of the Royal Court of Jersey, 1925, called by the Middle Temple, 1925, and Solicitor-General of Jersey, 1936.

EDGAR IGNATIUS GODFREY UNSWORTH, Esq., Q.C., Attorney-General of Northern Rhodesia. Called by Gray's Inn, 1930, and took silk (Northern Rhodesia), 1951.

ROYAL VICTORIAN ORDER

K.C.V.O.

The Hon. Sir ALBERT EDWARD ALEXANDER NAPIER, K.C.B., Q.C. Called by the Inner Temple, 1909, and took silk, 1947.

C.V.O.

JOHN MORTON WORTHINGTON, Esq. Admitted 1905. Called by Lincoln's Inn, 1921.

ORDER OF THE BRITISH EMPIRE

G.B.E.

The Rt. Hon. CLARENCE NAPIER BRUCE, Baron ABERDARE, C.B.E. Called by the Inner Temple, 1911.

K.B.E.

Sir PHILIP WILBRAHAM BAKER-WILBRAHAM, Bt., Dean of the Arches. Called by Lincoln's Inn, 1901.

The Hon. Sir WILLIAM FLOOD, Justice of the High Court of Australia. Admitted to the Bar of Queensland, 1913.

ANDREW LOCKHART INNES, Esq., legal secretary and Parliamentary draftsman, Lord Advocate's Department. Admitted to the Faculty of Advocates, 1924.

The Hon. DUDLEY WILLIAMS, M.C., Justice of the High Court of Australia. Admitted to the Bar of New South Wales, 1915, and took silk, 1934.

C.B.E.

BERTRAM BENJAMIN BARON BENAS, Esq., J.P. Called by the Middle Temple, 1906.

ROLAND PEACE CLARKE, Esq. Admitted 1926.

MATTHEW GEORGE FISHER, Esq., Q.C., counsel to the Secretary of State for Scotland. Admitted to the Faculty of Advocates, 1913, and took silk (Scotland), 1938.

ROBERT LLEWELLYN GARBUTT, Esq., Assistant Solicitor, Ministry of Pensions and National Insurance.

CHRISTOPHER LEONARD PATRICK GILSHENAN, Esq., O.B.E., Assistant Solicitor Director, Legal Division, Allied Commission for Austria (British Element).

JAMES WILLIAM FRANCIS HILL, Esq., Alderman, Lincoln City Council. Admitted 1926.

REGINALD NORTHAM, Esq. Called by the Inner Temple, 1928.

Colonel GEOFFREY LITTLEWOOD PEACE, T.D., lately Senior Legal Assistant, Berlin Control Commission for Germany (British Element).

CYRIL THEODORE ANSTRUTHER WILKINSON, Esq., Registrar, Principal Probate Registry.

O.B.E.

HAROLD INGHAM BEARDER, Esq., Chairman, National Insurance Local Tribunal, Halifax. Admitted 1908.

WILLIAM KING DAVIES, Esq., Town Clerk, Port Talbot. Admitted 1923.

PHILIP HENRY HARROLD, Esq., Town Clerk, Hampstead. Admitted 1923.

HAROLD POWIS, Esq. Admitted 1921.

M.B.E.

THOMAS BAGLEY, Esq. Admitted 1922.

ALFRED ERNEST HOLLOWAY, Esq., Chief Clerk, Manchester District Registry of the Hgh Court, Supreme Court of Judicature.

ALFRED SLATOR, Esq., Managing Clerk, Lees and Co., Parliamentary Agents.

HORACE AUBREY NELSON TEBBS, Esq. Admitted 1929.

WILLIAM GEORGE WILLIAMS, Esq., Managing Clerk, Sharpe, Pritchard and Co., Parliamentary Agents.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

HOUSE OF LORDS

INCOME TAX: WHETHER COST OF ANTI-NATIONALISATION CAMPAIGN A TRADING EXPENSE

Morgan (Inspector of Taxes) *v.* Tate & Lyle, Ltd.

Lord Morton of Henryton, Lord Reid, Lord Tucker, Lord Asquith of Bishopstone and Lord Keith of Avonholm. 1st June, 1954

Appeal from the Court of Appeal ([1953] Ch. 601; 97 SOL. J. 402).

The company, which was engaged in sugar refining and refined more than half the sugar refined in the United Kingdom, incurred expenses of over £15,000 in a propaganda campaign to oppose the anticipated nationalisation of the industry. For the purposes of its assessment to income tax, it sought to deduct that amount as being a trading expense. The Commissioners for the Special Purposes of the Income Tax Acts for the City of London and, on appeal, Harman, J., and the Court of Appeal, found for the company. The Crown appealed to the House of Lords.

LORD MORTON OF HENRYTON said that the directors and shareholders had one purpose only, viz., to prevent the seizure of the business and assets and the money was laid out solely for this purpose. The question of law was whether that money was "wholly and exclusively . . . expended for the purposes of the trade" within the meaning of r. 3 (*a*) of the rules applicable to Cases I and II of Schedule D to the Income Tax Act, 1918. Apart from authority, his lordship would have had no hesitation in answering the question in the affirmative, since if the assets were seized the company could no longer carry on its trade, and so the money was spent to preserve the very existence of the company's trade. Thus it could be accurately described as spent "for the purpose of enabling the company to carry on and earn profits in the trade" (*Strong & Co. of Romsey, Ltd.* v. *Woodifield* [1906] A.C. 448, at p. 453). Not one of the cases dealing with the Income Tax Acts threw any doubt on this view. The Commissioners had found that the sum in question was an admissible deduction and there was no reason in law which prevented them from so finding. The appeal should be dismissed.

LORD REID and LORD ASQUITH OF BISHOPSTONE agreed.

LORD TUCKER and LORD KEITH OF AVONHOLM dissented.

APPEARANCES: *Sir Reginald Manningham-Buller*, Q.C., S.G., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *Tucker*, Q.C., *Borneman*, Q.C., and *Desmond Miller* (*Pennefather & Co.*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[3 W.L.R. 85**

COURT OF APPEAL

RENT RESTRICTION: TENANT CEASING TO OCCUPY PERSONALLY: RELATIVES OCCUPYING UNDER TERM OF CONTRACTUAL TENANCY

Cove *v.* Flick

Somervell, Denning and Romer, L.JJ. 17th December, 1953

Appeal from Southend County Court.

In 1938 a landlord let a house to a tenant who in a conversation said that it was to be a home for his parents and sister as well as for himself. In 1949, the tenant married and went to live elsewhere, leaving some furniture in the house, which continued to be occupied by the members of his family. In 1953, the landlord served notice to quit on the tenant contending that he had ceased to occupy the premises. The tenant relied on the conversation in 1938 and contended that it was a term of the tenancy agreement that the property should be occupied by his relatives and that that term was carried over into the statutory

tenancy so as to extend the protection of the Acts to the occupation by his relatives; and also that as he intended to return in certain eventualities the principle in *Skinner* v. *Geary* [1931] 2 K.B. 546 as to personal occupation by the tenant could not apply. The county court judge gave the landlord possession. The tenant appealed.

SOMERVELL, L.J., said that in *Wabe* v. *Taylor and Wife* [1952] 2 Q.B. 735 Birkett, L.J., had referred to a discussion in Mr. Megarry's book ("The Rent Acts," 6th ed., p. 155) with regard to two county court cases in which there were grounds for saying that at the time the tenancies were negotiated it was on the basis that somebody other than the lessee should occupy; and Mr. Megarry had concluded that though such decisions presented theoretical difficulties, the satisfactory results could be supported on the ground that by their agreement the parties had made occupation by those other persons equivalent to personal occupation by the tenant. His lordship was not clear that the parties could in fact do that, nor that what was said in *Wabe* v. *Taylor and Wife* should be regarded as having any general application beyond the facts of that case. The landlord in the present case was entitled to rely on the principle of *Skinner* v. *Geary* [1931] 2 K.B. 546. Moreover, the tenant could not maintain that he should not be treated as a non-occupying tenant although he had left furniture in the house and might return in certain eventualities. The appeal should be dismissed.

DENNING, L.J., agreed. The Rent Acts only protected occupying tenants so long as they were in occupation, and the members of a tenant's family could not stay in the house when he ceased to occupy or died, save in the special circumstances provided for by s. 12 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

ROMER, L.J., also agreed. The passage in the sixth edition of Mr. Megarry's book had contained the precautionary word "perhaps," which had been dropped in the latest edition. His lordship agreed with what had been said about the difficulty of Mr. Megarry's proposition, and would like to see the word "perhaps" restored. Appeal dismissed.

APPEARANCES: *John Gower* (*Kingsford, Dorman & Co.*, for *Gregson & Golding*, Southend-on-Sea); *Brian Gibbens* (*Gibson and Weldon*, for *H. Maxwell Lewis*, Southend-on-Sea).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 82n**

RENT RESTRICTION: TENANT NEVER OCCUPYING NOR INTENDING TO OCCUPY

S. L. Dando, Ltd. *v.* Hitchcock and Another

Lord Goddard, C.J., Denning and Birkett, L.JJ. 9th April, 1954

Appeal from High Wycombe County Court.

In 1945 a landlord let a farmhouse to a tenant, one of the terms in the agreement providing that either the tenant or his business manager should live in the house. The tenant never occupied it at any time nor ever intended to do so, but his manager lived in the house with his family from 1945.

In 1953 the landlord's interest was purchased by the plaintiff company who served notice to quit on the tenant and applied to the county court for an order for possession against both the tenant and his manager. They resisted that order on the ground that the tenant "retained possession" of the premises within the meaning of s. 15 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, through the occupancy of his manager. The county court judge held that where a tenant had legal possession of a house which was occupied by another with the knowledge and consent of the landlord, such occupation was sufficient to support the conclusion that he retained possession within the meaning of s. 15 (1), and refused the order for possession. The landlord appealed.

DENNING, L.J., giving the first judgment, said that the manager was only a licensee. If the tenant could by reason of the clause in the original agreement claim the protection of the Rent Restriction Acts, it would mean that a limited company by a like clause could obtain protection. That would be contrary to the principle laid down that a tenant was only protected so long as he himself retained possession, which meant so long as he himself remained in personal possession. The husband and wife cases to which reference had been made were on a special footing. The only person protected under the Acts was the tenant; and he was only protected so long as it was his home. His lordship would allow the appeal.

BIRKETT, L.J., agreed. The county court judge had relied on *Wabe* v. *Taylor and Wife* [1952] 2 Q.B. 735; [1952] 2 T.L.R. 264; [1952] 2 All E.R. 420, but it was plain that the decision there was that on those facts the occupancy of a wife could be regarded as the occupancy of the tenant. That principle could not be extended without coming into conflict with other decisions since the principle of personal occupation had been laid down in *Skinner* v. *Geary* [1931] 2 K.B. 546.

LORD GODDARD, C.J., also agreed. It might be true that there had in the cases of husband and wife been an inroad into the principle that the Acts were intended and designed to protect tenants and tenants only; but the court should not by decisions enlarge the difficulties of landlords or go further than the declared object and policy of the Acts dictated. He saw no reason at all why this tenancy should be protected to enable the tenant to keep in the house a manager or a partner or anyone else whom it might be convenient to have there. Appeal allowed.

APPEARANCES: *Desmond Neligan* (*Berrymans*, for *Allan Janes & Co.*, High Wycombe); *Alan de Piro* (*Capel Cure and Clarke, incorp. Willmett & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 76**

CHANCERY DIVISION

PRACTICE AND PROCEDURE: ACTION AND COUNTER-CLAIM: ALLEGATIONS IN STATEMENT OF CLAIM ADMITTED: RIGHT TO CONTINUE OPENING

W. Lusty & Sons, Ltd. *v.* Morris Wilkinson & Co. (Nottingham), Ltd.

Lloyd-Jacob, J. 8th March, 1954

Action.

In an action to restrain the defendants from threatening, by letters, circulars or otherwise, the plaintiffs, their customers or agents with proceedings for infringement of a registered design, the defendants, by their defence, alleged that the plaintiffs had infringed their copyright in that design and counter-claimed for an injunction restraining them from so doing. At the opening of the proceedings by counsel for the plaintiffs, counsel for the defendants intervened and conceded that the letters relied on as constituting threats were written by the defendants and amounted to threats within the meaning of s. 26 of the Registered Designs Act, 1949. He then applied to the court for a direction that he had the right to open the matter arising on the remaining issues.

LLOYD-JACOB, J., said that the same point had arisen in *Lewis Falk, Ltd.* v. *Henry Jacobwitz* [1944] Ch. 64, except that the admissions were made in the pleadings and not at the bar; it was suggested that that case should be distinguished on that ground. *Pontifex* v. *Jolly* (1839), 9 C. & P. 202, was not helpful in the present case, but guidance was to be had from the words of Brett, L.J., in *Thompson* v. *South Eastern Rly. Co.* (1882), 9 Q.B.D. 320, that the duty of the court was to consider what was the fair mode of trying what was shown to be the substantial matter. Having regard to the admissions made in the present case, the substantial matter was the determination of the issues in the counter-claim. Accordingly, the plaintiffs' counsel could conclude his observations on the plaintiffs' claim; and thereafter defendants' counsel should proceed on the counter-claim.

APPEARANCES: *J. Mould*, Q.C., and *S. I. Levy* (*Gouldens*); *K. E. Shelley*, Q.C., and *A. D. Russell-Clarke* (*Sharpe, Pritchard and Co.*, for *J. A. Simpson & Coulby*, Nottingham).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 911**

MASTER AND SERVANT: HOLIDAYS WITH PAY: MEANING OF "WORKER"

Westall Richardson, Ltd. *v.* Roulson

Vaisey, J. 27th May, 1954

Witness action.

The Wages Councils Act, 1945, provides by s. 10 that any wages council shall have power to submit proposals to the Minister regarding the remuneration and holidays of the "workers in relation to whom the council operates." By s. 23 (1), "'worker' means any person who has entered into or works under a contract with an employer . . ." By the regulations (S.I. 1952 No. 957) made under the Act with relation to the cutlery trade, "an employer shall . . . allow . . . an 'annual holiday' to every worker in his employment," paying also "holiday remuneration." An action was commenced by a firm of cutlery manufacturers, as a test case, to determine whether the defendant was a worker in

their employment entitled to holidays with remuneration under the provisions of the Wages Councils Act, 1945, and the regulations made thereunder. The defendant occupied a portion of a shop forming part of the company's premises at their factory under a verbal weekly tenancy at a rent of £2 10s. a week, covering power, heat and light and the hire of machinery, the property of the company. He carried on in that portion of the shop the process known as "mirror polishing" and employed for that purpose several employees. The company supplied him from time to time with basic materials and entered into contracts with him on terms which were customary in the cutlery industry and under which he undertook to process the basic materials, using his own methods and without being in any way controlled by the company. He was assessed to income tax, not on the basis of P.A.Y.E., but under Schedule D of the Income Tax Acts, and rates of allowances for expenses were agreed by him with the Inland Revenue authorities, without any reference to the company.

VAISEY, J., said that the definition of "worker" was not very easy to apply to the facts of the case. "Employment" was a word of wide significance, but "employer" and "employee" were much more restricted. The question was, whether the defendant was an employee or an independent contractor. On the whole, it seemed that he worked not under a contract with an employer, but under a contract or series of contracts with a customer. There might be some element of service in his position, but there was a greater element of independence and freedom. *Templeton* v. *William Parkin & Co., Ltd.* (1929), 22 B.W.C.C. 110, a workmen's compensation case, was analogous, but did not govern the present case. There must be a declaration that the relationship of the plaintiffs and the defendant was outside the terms of the Act. Judgment for the plaintiffs.

APPEARANCES: *G. Paull*, Q.C., *I. J. Lindner*, Q.C., and *P. Jenkin* (*Bell, Brodrick & Gray*, for *Harold Jackson & Co.*, Sheffield); *Melford Stevenson*, Q.C., and *J. Platts-Mills* (*Ellis, Bickersteth, Aglionby and Hazel*, for *Elliott & Co.*, Sheffield).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 905**

QUEEN'S BENCH DIVISION

ELECTRICITY: DEATH CAUSED BY FAULT IN CONSUMER'S INSTALLATION: LIABILITY OF ELECTRICITY SUPPLIERS

Sellars *v.* Best and Another

Pearson, J. 17th February, 1954

Action tried at York Assizes.

The Electricity Supply Regulations, 1937, provide by reg. 25: "(*a*) The undertakers shall be responsible for all electric lines and apparatus placed by them on the premises of a consumer . . . being installed and maintained in a safe condition . . ." By reg. 26: "The undertakers shall not permanently connect a consumer's installation with their electric lines unless they are reasonably satisfied that the connection . . . will not cause a leakage . . ." By reg. 27: "(*a*) The undertakers shall not be compelled to commence or . . . to continue to give a supply of energy unless they are reasonably satisfied in respect of the consumer's installation—(i) That all conductors . . . are constructed installed and protected so as to prevent danger . . .; (ii) That every distinct circuit is protected against excess energy by means of a suitable fusible cut-out . . ." The first defendant, an electrical contractor, installed at the plaintiff's house an electric boiler together with a new circuit, but failed to provide a fully efficient earthing system for the circuit. The second defendants, the electricity board, connected up the new circuit to their supply but before so doing, although they carried out certain tests, did not test to ascertain whether or not the earthing system was adequate. About three months after its installation the insulation of the boiler became defective with the result that electricity escaped into the metal shell and gave the plaintiff's wife an electric shock from which she died. If there had been a proper earthing system no accident would have happened. In an action by the plaintiff claiming damages as a result of his wife's death the first defendant was, on the facts, found to have been guilty of want of care in installing the boiler. The plaintiff also claimed against the board alleging breach of statutory duty under reg. 27, and negligence at common law.

PEARSON, J., said that reg. 27 (*a*) had been very carefully drawn and it would be wrong to assume that the variation in its opening words as compared with the other regulations was made *per incuriam*. The effect of the regulation was, that the statutory obligation to supply electricity was subjected to the condition that the board should be reasonably satisfied. If they gave a supply without being satisfied, they committed no offence under the regulation. There was no obligation to carry out any inspection or testing, nor had the board any power to insist on inspection or testing. As to liability at common law, the board were responsible for matters up to their terminal supply points. It was too much to say that they were responsible for what the occupier or his contractors had done or omitted to do beyond such points; that would be carrying too far the kind of tortious liability envisaged in *Donoghue* v. *Stevenson* [1932] A.C. 562. Judgment for the second defendants.

APPEARANCES: *J. McLusky* (*J. D. Whitehead & Son*, Pickering); *E. Ould* (*Barnet Ellis*, Pickering); *G. Veale*, Q.C., and *G. N. Black* (*Jacksons, Monk & Rowe*, Middlesbrough).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 913**

COMPULSORY PURCHASE: SITE FOR HOUSING ESTATE: DEMOLITION OF DWELLING ON SITE

Attridge *v.* London County Council

Ormerod, J. 11th May, 1954

Action.

In 1948 the London County Council made an order under Pt. V of the Housing Act, 1936, for the compulsory purchase of an area of land for development as a housing estate. After a public inquiry the order was confirmed by the Minister of Health and, no appeal having been made, became valid and binding. The plans of the local authority for the development of the site involved the demolition of a bungalow which was already on the site and which was capable of being used as a house for the working classes, in order to construct a road. The plaintiff, the former owner and the occupier of the bungalow, refused to accept notices of intention to enter served upon her by the county council. She alleged that, since her house was suitable as a dwelling-house for the working classes, the defendants' power to purchase her property was subject to the performance by them of their duty under s. 79 (4) of the Housing Act, 1936, and that, as their scheme for development did not provide for the performance of that duty, the notices of intention to enter served upon her by the defendants were invalid and of no effect. She claimed an injunction restraining the defendants from trespassing upon her premises or from proceeding with any scheme or plan to pull down or demolish her house. She also claimed a declaration that the defendants were not entitled to proceed with any scheme or plan compulsorily to acquire her premises or with any scheme or plan to pull down or demolish her dwelling-house, or, alternatively, a declaration that the provisions of s. 79 (4) of the Housing Act, 1936, applied to her dwelling-house. Section 73 of the Housing Act, 1936, [prior to amendment by the Housing Act, 1949], gives local authorities power "(*a*) to acquire any land, including any houses thereon, as a site for the erection of houses for the working classes; (*b*) to acquire any houses . . . which are, or may be made, suitable as houses for the working classes." By s. 79 (4): "Where a local authority acquire a house . . . which can be made suitable as a house for the working classes . . . they shall forthwith proceed to secure the alteration, enlargement, repair or improvement of the house."

ORMEROD, J., said that he accepted the contention of the county council that the word "houses" in s. 73 (*a*) had no restricted meaning and did not merely refer to houses other than houses suitable for the accommodation of the working classes, but to houses generally. The proper view to take of s. 73 and of s. 79 (4) was that if a house was acquired by a local authority under s. 73 (*b*) which was suitable, or could be made suitable, to be used as a house for the working classes s. 79 (4) applied, and the local authority must deal with the house in accordance with s. 79 (4); but if the local authority acquired a site under s. 73 (*a*) for the purpose of developing a housing estate, the mere fact that there were buildings already on the site which might be used, or which might be adapted to be used, as working-class dwellings, did not in any way restrict the power of the local authority in settling their plans and drawing up their designs for the proper development of that estate. The words of Lloyd-Jacob, J., in *Uttoxeter Urban District Council* v. *Clarke* [1952] 1 All E.R. 1318, 1320: "As I read the section, it is directed to the instance where the local authority acquires a house for conversion, and it is by no means obligatory in respect of houses

which are acquired as part of an estate," covered the situation exactly. He (his lordship) was satisfied that the real position in the present case was that the land was acquired as a site for the erection of houses for the working classes, and that s. 79 (4) did not apply. The action accordingly failed. Action dismissed.

APPEARANCES: *H. J. Phillimore*, Q.C., and *J. R. C. Samuel-Gibbon* (*Hamlins, Grammer & Hamlin*, for *A. E. Hamlin*, Sheringham); *Percy Lamb*, Q.C., and *J. Ramsay Willis* (*J. G. Barr*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 70

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Acton (Repeal and Amendment of Local Enactments) Order, 1954. (S.I. 1954 No. 740.)
Air Navigation (General) (Fifth Amendment) Regulations, 1954. (S.I. 1954 No. 753.)
Air Navigation (Seventh Amendment) Order, 1954. (S.I. 1954 No. 751.)
Air Navigation (Eighth Amendment) (Visiting Forces) Order, 1954. (S.I. 1954 No. 752.) 5d.
Bexhill Water Order, 1954. (S.I. 1954 No. 735.)
Control of Explosives Order, 1954. (S.I. 1954 No. 757.)
Defence Regulations (No. 2) Order, 1954. (S.I. 1954 No. 750.)
This Order, which comes into force on 30th June, provides that certain powers of the Minister of Labour and National Service under reg. 59 (1) of the Defence (General) Regulations with respect to the Factories Act, 1937, shall cease to be exercisable as from that date.
Education Authorities (Scotland) Grant (Amendment No. 4) Regulations, 1954. (S.I. 1954 No. 727 (S. 82).)
Exchange of Securities (No. 3) Rules, 1954. (S.I. 1954 No. 726.) 5d.
Imported Livestock (Marking) Order, 1954. (S.I. 1954 No. 760.) 5d.
London Traffic (Prescribed Routes) (No. 12) Regulations, 1954. (S.I. 1954 No. 745.)
Ploughing Grants Scheme, 1954. (S.I. 1954 No. 758.) 5d.
Radcliffe (Repeal of Local Enactments) Order, 1954. (S.I. 1954 No. 741.)
Retention of Cables, Main and Pipes under Highways (Lancashire) (No. 1) Order, 1954. (S.I. 1954 No. 715.)
Stopping up of Highways (County of Southampton) (No. 2) Order, 1954. (S.I. 1954 No. 717.)
Stopping up of Highways (East Riding of Yorkshire) (No. 2) Order, 1954. (S.I. 1954 No. 716.)
Stopping up of Highways (Huntingdonshire) (No. 1) Order, 1954. (S.I. 1954 No. 732.)
Stopping up of Highways (Kent) (No. 5) Order, 1954. (S.I. 1954 No. 720.)
Stopping up of Highways (London) (No. 24) Order, 1954. (S.I. 1954 No. 719.)
Stopping up of Highways (Northampton) (No. 1) Order, 1954. (S.I. 1954 No. 731.)
Stopping up of Highways (Northumberland) (No. 3) Order, 1954. (S.I. 1954 No. 728.)
Stopping up of Highways (Shropshire) (No. 1) Order, 1954. (S.I. 1954 No. 733.)
Stopping up of Highways (West Riding of Yorkshire) (No. 2) Order, 1954. (S.I. 1954 No. 718.)
Stopping up of Highways (Worcestershire) (No. 2) Order, 1954. (S.I. 1954 No. 730.)
Stopping up of Highways (Worcestershire) (No. 3) Order, 1954. (S.I. 1954 No. 734.)
Treasury (Loans to Local Authorities) (Interest) Minute, 1954. (S.I. 1954 No. 743.)
Treasury (Loans to Persons other than Local Authorities) (Interest) Minute, 1954. (S.I. 1954 No. 744.)
Unmanufactured Tobacco (Miscellaneous Controls) (Revocation) Order, 1954. (S.I. 1954 No. 737.)
Usk River Board Area (Fisheries) Order, 1954. (S.I. 1954 No. 736.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Landlord and Tenant—WHETHER COVENANTS AS TO COSTS OF MAKING UP SIDE STREETS RUN WITH UNDERLEASES

Q. *A* is the underlessee of the end one of a block of seven dwelling-houses fronting to a main road. At either end of the block there is an unmade side street. In the underlease under which *A* derives title the underlessee covenants to pay one-seventh part of the cost of making up each of the side streets. The underlessor also covenants with the underlessee to indemnify him in respect of any excess if he should be called upon to pay any sum of money in excess of such one-seventh. It is assumed that the underleases of the other six houses are in similar form. The side street abutting on *A's* house has now been made up by the local authority and *A* has been charged with the whole of the cost. Since the original underlease of 1911 there have been assignments of both the underlease and the immediate reversion. (*a*) Is the covenant by the underlessor (which relates to a house abutting upon the side street) one which has reference to the subject-matter of the lease so as to run with the underlease and be enforceable by *A*? (*b*) Assuming that such covenant is enforceable and *A* is indemnified by the underlessor, what is the underlessor's position as to recovering proportions from the other underlessees whose houses do not abut on the side street? Do these covenants also have reference to the subject-matter of the lease?

A. There is not, as far as we are aware, any decision on all fours with either set of facts, and our opinion is (*a*) that the covenant relating to a house abutting upon the side street has reference to the subject-matter, though this must be considered arguable, and (*b*) that the same applies to the other underlessees' covenants, though this must be considered more arguable. In our view, the Irish case of *Lyle* v. *Smith* [1909] 2 Ir. R. 58 would support this opinion; a tenant's covenant, in a lease of land near the sea, to maintain a sea wall not part of the demised premises was held to run with the land. So would *Easterby* v. *Sampson* (1829), 9 B. & C. 505, in which a covenant in a mining lease to build a smelting mill on land not part of the premises was held to bear that character. In both these cases the underlying principle could be said to be that the demised property benefited by the observance of the covenant, and this should, in our opinion, be applied to both the sets of facts submitted, though it fits those of (*a*) more readily and closely than those of (*b*). Reference could also be made to *Norval* v. *Pascoe* (1864), 34 L.J. Ch. 82, another mining lease case in which the covenant was for payment of compensation for letting down the surface. The arguments to the contrary would find support in *Gower* v. *The Postmaster-General* (1887), 97 L.T. 527 (a covenant to pay rates and taxes on premises not demised held to be collateral); it could be argued that, in the case of (*b*) especially, the assignee was likewise being asked to make contributions to public revenue from which he derived no particular benefit as tenant.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with **a stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Lease for 999 Years—Assignment—Release of Covenants—Rectification—Variation

Q. In 1927 a local authority, *A* (the owner of the house and land in fee simple), granted a lease thereof to *B* for a term of 999 years at a yearly ground rent of £1 15s. The premises were subsequently assigned by *B* to *C* and by *C* to *D*. *B*, the original lessee, cannot now be traced. The lease contained a covenant by *A* (the lessors) to insure the premises against fire and to rebuild or reinstate in case of destruction or damage by fire. The lease also contained a covenant by the lessee to pay all premiums payable under the fire insurance policy. In leases for 999 years it is, of course, usual for the lessee to covenant to insure and reinstate in case of destruction. It is now desired, if possible, to rectify the original lease by releasing the covenant by *A* to insure, etc., and the covenant by *B* to pay the fire insurance premiums and to substitute a covenant by the lessee to insure and reinstate. *A* is still the owner of the freehold reversion. Would a deed of release, containing a release of the original covenants by *A* and *B* and substituting the proposed new covenants by the lessee and executed by *A* and *D* alone, be effective without the concurrence of *B*? If not, can the rectification be carried out by any other means?

A. In our opinion, though *Napier* v. *Williams* [1911] 1 Ch. 361 is not conclusive on the point, rectification could not be granted against an assignee. Nor does the case appear to be one for rectification, the essential of which is that the deed, owing to a mistake, fails to express the real intention of the parties; the fact that what is expressed is something unusual would not warrant the inference that it was not intended. But we see no reason why the lease should not be varied rather than rectified; if *B* cannot be found, the circumstance that the authority would lose the benefit of his liability as original covenantor would not matter.

Lease—Rent of £1,900 to be Paid in Gold Sterling or Banknotes of Equivalent Value—Amount Payable

Q. In December, 1938, *A* leased certain property to *B* for the term of ninety-nine years from June, 1930, and the reddendum was as follows: "Paying therefor yearly during the said term either in gold sterling or Bank of England notes to the equivalent value in gold sterling the rent of £1,900 to be paid without any deduction except for landlord's property tax, land tax and tithe redemption." *B* has tendered £1,900 in Bank of England notes and alleges that amount to be the full extent of his liability for a year's rent now due. At present the Bank of England is paying 58s. for a gold sovereign, and for such year's rent, therefore, *A* claims £5,510 (1,900 × 58s.) in Bank of England notes. Is there any statute or other provision which enables *B* to discharge his liability by paying Bank of England notes only to the extent of £1,900?

A. We do not think that there is any legislative provision which will help *B*. He would not normally be able to obtain gold sterling without Treasury consent, but that would not absolve him from his obligation since there is an alternative means of payment in bank notes. The effect of the statutes is to make Bank of England notes equivalent to legal tender, but this leaves unsolved the problem of the *amount* to be paid in those notes. This problem is purely one of construction of the agreement between the parties. The authorities show that such wording is a perfectly valid method by which "to protect one of the contracting parties against a depreciation of the currency" (*per* Lord Russell in *R.* v. *International Trustee, etc.* [1937] A.C. 500, at p. 556). We think that the reddendum would be construed as if the words "or Bank of England notes to the equivalent value in gold sterling" had been put in parentheses, so that the obligation is quantified at £1,900 in gold sterling, or the bank note equivalent calculated at the price of gold at the time when the payment falls due (see on this point of the correct time *Auckland Corporation* v. *Alliance Assurance Co.* [1937] A.C. 587, *per* Lord Wright, at p. 605). But what has been the parties' practice in past years? The lease has existed since 1938. It might just be arguable that if the rent has always been paid and accepted in the form of bank notes having a nominal value of £1,900, that would be some indication of the parties' intention and so affect the construction of the document (cf. *Ottoman Bank of Nicosia* v. *Dascalopoulos* [1934] A.C. 354; but contrast *Ottoman Bank of Nicosia* v. *Chakarian* (*No. 2*) [1938] A.C. 260).

NOTES AND NEWS

Honours and Appointments

Mr. Leonard Arthur Bird, solicitor, of Hull, has been appointed an under-sheriff for Hull.

Mr. Joseph Anthony Garnett, solicitor, of Derby, has been elected president of the Derby and Derbyshire Chamber of Commerce.

The President of the Board of Trade has approved the appointment of Mr. J. L. Girling, a Superintending Examiner in the Patent Office, as Comptroller-General of Patents, Trade Marks and Designs, in the place of the late Sir John Blake.

Wills and Bequests

Mr. A. G. L. Gamlen, retired solicitor, of St. Albans, left £59,125 (£58,914 net).

Sir Thomas D. Harrison, solicitor and legal adviser to the Ministry of Health from 1934–51, left £36,609 (£35,631 net).

Mr. A. J. Sturton, solicitor and assistant registrar at the Land Registry, left £20,973.

Mr. L. D. Thomas, solicitor, of Exeter and Crediton, left £48,854 (£48,709 net).

Mr. A. M. Wilson, solicitor, of Salisbury, and Registrar of Salisbury County Court and District Registry, left £43,026 (£41,934 net).

OBITUARY

Mr. W. T. CUMPSTY

Mr. William Traviss Cumpsty, town clerk of Lewes since 1942, died on 8th June, aged 51. He was admitted in 1928.

Mr. W. V. REEVE

Mr. William Vevers Reeve, solicitor, of the Strand, London, W.C.2, died on 6th June. He was admitted in 1901.

Mr. S. SMITH

Mr. Stanley Smith, retired solicitor, of Birmingham, died on 10th June. He was admitted in 1902.

Mr. W. H. TRUMP

Mr. William Henry Trump, retired solicitor, of Rhymney, Mon, died recently, aged 83. He was formerly clerk to the Rhymney Urban Council, a position he held for twenty-five years. He practised in Rhymney, his native town, for fifty-seven years, having been admitted in 1897.

SOCIETIES

At the annual meeting of the Incorporated Law Society of Merthyr Tydfil and Aberdare, on 11th June, Mr. D. J. Davies, of Mountain Ash, was elected president for the year 1954–55, and Mr. R. Freedman, M.A., vice-president. The hon. treasurer and hon. secretary, Messrs. Taliesin Griffiths and W. J. Canton, D.L., LL.B. (both of whom have held office since 1932) were re-elected.

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